

Codifying coexistence: Land access frameworks for Queensland mining and agriculture in 1982 and 2010

By: DAVID J. TURTON

Fenner School of Environment and Society, Australian National University

Media and academic commentary on the growth of coal mining and coal seam gas development in Australia frequently utilises the theme of conflict between the needs of this industry and pre-existing land uses, namely agriculture, depicting these two industries in a struggle over livelihoods and landscape.¹ Historians and human geographers have noted the escalating friction between agriculture and coal mining in Australia from the 1980s onward. Acknowledging that conflict arose because of the increased proximity of the two sectors, frameworks designed to promote coexistence between agriculture and coal mining in this era are nonetheless missing from the literature.² Yet during the 1980s, the need for compromise between them was remarked upon.³ Indeed, the challenge of promoting coexistence between mining and agricultural interests remains a topic of great interest for corporate social responsibility researchers in the present.⁴ Therefore this case study of the preparation of a voluntary ‘Explorer-Landholder Procedures: A Common-sense Guide to Good Relations Between Miners and Farmers’ (the ‘Guide’), in 1982, is offered as an example of an attempt to promote accommodation between agriculture and mining in Queensland, in order to highlight what might be possible in the present era through the current Land Access Code (the ‘Code’) – a document partly legislatively mandated and introduced in November 2010.⁵ In seeking to draw on the experience of the Guide and evaluate the Code, a ‘typology of relevance’ for environmental history, as devised by Stephen Dovers, is referred to as a convenient structural format and analytical device.⁶

After discussing this typology, the literature concerning voluntary codes of conduct in the mining industry and the wider political context of the Guide’s preparation will be detailed, followed by a brief overview of the legal background that informs land access arrangements in Queensland – before examining the case study.

It is argued that the Guide’s formulation occurred without government involvement, relying instead on cooperation between industry representative bodies – the Queensland Grain Growers Association and the Queensland Chamber of Mines. However, the desire for an accommodative framework between these parties emerged in the context of broader government efforts to reform Queensland’s mining legislation, culminating in the passage of the *Mining Act and Other Acts Amendment Act 1982* (Qld). The Guide is linked with a general growth in voluntary agreements between industry and government from the 1980s to the present. It is further suggested that the Guide may be of assistance in any future changes to the largely statutory-based Code, particularly as an example for improved relationships between stakeholders in a voluntary capacity.

A Typology of Relevance

Dovers' typology indicates the potential for environmental history to constructively participate in contemporary sustainability debates and policy. Calling for a 'pragmatic' environmental history, Dovers argues that in addition to their normal scope of operations, a more explicit connection to the sustainability challenges of today should be made by historians.⁷ Envisioning three levels of relevance where environmental history might be expected to offer insight, Dovers treats the first of these as offering a general historical perspective to seemingly 'new' sustainability challenges – essentially informing and contextualising contemporary problems.⁸ In terms of this case study, this aspect of relevance can be seen in the extent to which provisions of the Guide are replicated in the modern-day Code, with both documents drafted to meet the challenge of ensuring the successful management of two crucial industries. Using historical analogies for contemporary events is of course as attractive to media commentators as it is to historians, whether to support a policy direction or criticise it – and may not necessarily be faulty in its application.⁹ Coal seam gas has not escaped this, with Owen Powell noting the degree of parallel between modern coal seam gas access concerns and historical struggles over water rights in the Great Artesian Basin from the sinking of bores to further the ambitions of Australia's pastoral industry during the late 19th and early 20th centuries.¹⁰

A second layer of relevance focuses on the establishment of human and non/human baselines, as 'useable understandings of change in dynamic systems, be they natural or human, will not emerge without appreciation of previous states'.¹¹ The obvious application to this analysis lies in the types of factors that drove legislative change, how amendments to the *Mining Act* were found wanting amongst farmers and miners, such that they felt compelled to negotiate and then jointly release the Guide, to achieve the goals they desired for coexistence in the landscape.¹² While Queensland's legislative process was insufficient to respond to the requirements of all stakeholders in the 1980s – forcing a voluntary approach to the task – the law has become an essential instrument in protecting the interests of all parties in the present. Yet the shift to a legislatively endorsed Land Access Code is not complete, and still demands an exercise of voluntary goodwill in relation to part two of the Code (which deals with matters of communication and the negotiation of land access agreements), raising concerns amongst some stakeholders of unmet expectations. This was despite a recent review of the Code, which concluded that 'many landholders believe positive outcomes can be attributed to the Land Access Code'.¹³

Finally, Dovers posits that environmental history may be capable of presenting relevance through 'real policy, institutional, or management lessons to be learned from past experiences'.¹⁴ Acknowledging that it is somewhat vulnerable to challenge,¹⁵ this layer of relevance urges historians to investigate topical policy problems and institutional challenges by engaging in a 'search for precedents, warnings or models of [previous responses to environmental change]'.¹⁶ Nor is Dovers alone in calling for historians to assume a place in the development of policy.¹⁷ Before discussing the literature that informs this case study, it is stressed that the use of Dovers' typology should be viewed as 'a step along the way' to encouraging an increased range of

purposes for environmental history – rather than a final and determinative statement on its application.

Literature overview

While recognising that mining history is ‘one of the neglected aspects of Australian environmental history’, with an emphasis towards the heritage of individual companies and nineteenth century gold rushes rather than more recent events,¹⁸ that tendency is shifting in light of current controversies over mineral extraction in Australia.¹⁹ Others, such as Ross Fitzgerald and Drew Hutton,²⁰ have assessed the environmental impact of Queensland’s mining heritage through what John McNeill has described as a political approach to environmental history, with investigations focussed on ‘law and state policy as it relates to the natural world’.²¹ In terms of this case study, there has been a clear desire amongst legal commentators to acknowledge the history of Queensland’s *Mining Act* when relevant. The emergence of environmental responsibility as a policy objective in state legislation has been observed in the different purposes of the *Mining Act 1968* and its successor, the *Mineral Resources Act 1989*.²² Specific attention has also been drawn to the *Mining Act and Other Acts Amendment Act 1982* (Qld) in the context of the development of compensation provisions for landholders.²³

At the time of its enactment, media and academic commentary on the Act was somewhat limited.²⁴ For interested parties in mining, conservationist and agricultural circles, however, there was much to discuss when the Act came into operation on 1 August 1982.²⁵ This literature offers an insight into the priorities of the legislature during this period, but the Guide itself also received some attention as part of a wider effort to minimise the exploratory impacts of mining operations, inspiring the Northern Territory Chamber of Mines to prepare its own Code of Conduct for Mineral Explorers in consultation with rural organisations in 1983.²⁶

Codes and guides of various forms have been utilised to manage interactions with the mining industry since at least the 1980s. At the national level the Australian Conservation Foundation worked alongside the Mining Council of Australia in 1997 to produce an industry code of practice, following a *Mining and Ecologically Sustainable Development* report in 1994.²⁷ Other examples of voluntary land access codes from this period can be found in Victoria, New South Wales and Western Australia.²⁸ More broadly, voluntary guidelines accorded well with the Australian coal industry’s stated preference for self-regulation in the 1980s, and the commissioning of studies to identify strategies to minimise the impact of their exploration activities on pastoral lands.²⁹ The fact that the Guide was implemented without the intervention of the Queensland Government is unusual for self-regulation schemes in general, given that governments often assume a facilitator role in bringing the requisite parties together to craft the desired standards.³⁰ The mining industry’s trend of striking agreements with primary producers which do not have statutory force has continued to the present, with the recent signing of a Principles of Land Access agreement in New South Wales, between AGL, Santos, Cotton Australia and the NSW Irrigators Council. The agreement is designed to grant the landholder the right to refuse drilling for coal seam gas on their land. However, the agreement does not extend to the right to refuse the development of

infrastructure associated with the industry on a farmer's property – namely power lines, roads and pipelines.³¹

Due to the types of lobby groups represented, this case study draws on historical conflicts between agricultural and mining interests which are framed in the context of competing expressions of capitalism – rather than a conservationist versus development-minded ethos – as evidenced, for example, in resource disputes between non-indigenous farmers and gold miners in colonial Zimbabwe (Southern Rhodesia).³² After all, passage of a statute with the apparent aim of environmental protection does not necessarily mean that it originated with an explicitly 'green' motivation. The initial driving force behind Queensland's *Litter Act 1971*, for example, was sparked not by a Keep Australia Beautiful campaign (as occurred in Western Australia),³³ but political perceptions that the state's criminal laws were insufficient for responding to vandalism.³⁴ In taking this focus, it is acknowledged that the range of stakeholders involved in disputes around mining in Australia has expanded greatly since the early 1980s, with a far more prominent environment movement today - including their politically unusual alliance with farming groups through the anti-coal seam gas organisation Lock the Gate.³⁵ Although conservationists were notable for their absence from the negotiations leading to the Guide's creation, their collaboration with farming groups would become significant by the late 1980s with a joint Australian Conservation Foundation-National Farmers' Federation submission seeking government action on soil conservation, culminating in the rise of Landcare – a joint enterprise between farmers and conservationists designed to combat land degradation.³⁶ Finally, while it is clear that mining and agriculture were both important to the Queensland Government in the 1980s, the relative political significance of mining in comparison to agriculture should be recognised – given the State's multiple interests in mining, its adjudication responsibilities between those interests and the extent to which a State's policy objectives may align with those of industry.³⁷

This is not to suggest that environmental protection was absent from the minds of rural lobby groups altogether in the early 1980s, but rather bound up in the task of preserving the landscape as a whole for economic purposes: 'The advent of open-cut mining in highly productive agricultural areas is ... a new development of major significance requiring wise and balanced legislation to protect our agricultural and environmental heritage'.³⁸ For the Queensland Producers' Federation, the question was one of balance, not exclusion: "I would like to make it clear that there has never been any suggestion that farmer organisations are against mining, or that primary producers wish to restrict fair and reasonable rights of companies to explore and survey land for possible future mining activities'.³⁹ It should also be noted that other contested land-uses, such as forestry, have encountered similar concerns to those engaged in mining when attempting to balance competing public and private benefits, whilst simultaneously striving to achieve improved social, economic and environmental outcomes.⁴⁰

The place of Indigenous Australians in these debates must also be acknowledged, given their involvement with coal mining and coal seam gas extraction in both pro and anti-industry capacities.⁴¹ While the Queensland Grain Growers

Association and the Queensland Chamber of Mines did not include any Indigenous stakeholders in their discussions around land access, these negotiations took place during a time of frequent controversy over the desire of the Bjelke-Petersen government (1968-87) to promote mining development at the expense of both environmental protection and the aspirations for land rights amongst Indigenous people of the State. This was demonstrated, for example, with bauxite development at Aurukun in Far North Queensland in the late 1970s.⁴² Circumstances have evolved with the recognition of native title by the High Court of Australia in the 1992 *Mabo* decision, and their subsequent *Wik* determination in 1996, which found that native title could coexist with particular types of pastoral leases – with Indigenous customary tenure only being extinguished to the extent of any inconsistency with the rights of the pastoral lessee.⁴³ A political furore erupted in the aftermath of the judgment and amendments to the Commonwealth's *Native Title Act* were passed in 1998 to give 'new statutory comfort [to pastoralists] that any native title that might exist on their leases could not interfere with any of their activities'.⁴⁴

One current example of direct involvement by Indigenous people in coal and coal seam gas development proposals can be seen at Mount Mulligan (Nguddaboolgan) – 100 kilometres west of Cairns (a site infamous as the scene of Queensland's worst land disaster in 1921).⁴⁵ The Djungan People have held native title interests at the site since 2012, and in 2013 seemingly executed a legally mandated Conduct and Compensation Agreement with the Perth-based Mantle Mining Corporation, thus permitting the company access to their land for exploration purposes.⁴⁶ Yet there is community division as to whether or not the company has a social licence to operate, with ongoing concerns regarding the potential for contamination of underground water aquifers due to exploration activities.⁴⁷ The above context thus provides a sufficient grounding upon which to proceed with a brief overview of mining law as it relates to land access concerns and the formulation of the Code and Guide.

Land access legal background

Historically, coal resources were bundled together with freehold grants to land for landholders, permitting them access (at common law) to both subsurface metals and topsoil rights. Exceptions to this were gold and silver, unless the Crown had reserved the right to the minerals in a deed of grant.⁴⁸ Eventually the various Australian states (at that time colonies) 'set about recapturing coal rights from old property holdings, and stripping them from new land grants'.⁴⁹ Queensland took several decades to formally reserve coal resources for the Crown in the *Mining on Private Land Act 1909* - including the Crown's right to access land to engage in 'searching for or working on any mines'.⁵⁰ Prior to this the State had largely (with the exception of gold) been content to dispose of land for the purposes of mining, thereby permitting the property in the minerals to pass to the freeholder.

By reserving petroleum resources,⁵¹ the Crown authorises the grant of titles (exploration and production licences) over land owned in fee simple (a type of freehold interest) or held as leasehold estates. Accordingly mining titles can be issued over

privately-held freehold land, native title holdings and Crown leases. Crown leasehold ownership is common in rural Australia – with a long history as a flexible policy instrument to secure economic and social development.⁵² It must be emphasised that land granted in fee simple does not equate to absolute ownership, as it remains subject to the doctrine of tenure – the idea being that ultimately the Crown owns all land and is charged with granting interests in land to landholders.⁵³ Title to petroleum resources is generally transferred from the Crown to a mining company with the issue of a licence and ‘ownership’ of that resource changes from the Crown to the company (titleholder) at the well-head, ‘which is also when royalties are calculated and paid [to the State]’.⁵⁴

Landholders (including Indigenous native titleholders) must negotiate land access and compensation agreements with mining titleholders - namely coal and coal seam gas companies.⁵⁵ Should the parties fail to reach agreement, or if access is denied to the titleholder, arbitration and litigation may follow – with the potential for an ‘eventual court determination requiring access based upon the terms determined by the court or arbitrator’.⁵⁶ Once extracted, coal and coal seam gas become the property of the titleholder - rather than the landholder.⁵⁷ The right to exclude others from one’s premises is of course fundamental to the ownership of real property, with the absence of consent (whether implied or express) ushering in a possible action in trespass.⁵⁸ However, petroleum titleholders already have this consent via the relevant Act and therefore this entitlement is largely voided in New South Wales and Queensland.⁵⁹ While coal seam gas has been referred to as ‘the modern property law conundrum’,⁶⁰ a link to the past behaviour of the mining industry in relation to Indigenous native title can certainly be made:

Ironically, the exercise by miners of CSG rights is in direct contrast to the mining industry’s widely publicised untruthful objections to native title following the *Mabo* and *Wik* decisions. Aggressive national campaigns were run at the time, warning freehold landowners of the threat that native title posed to the maintenance and exercise of private property rights. Native title, that most fragile of all property rights, was never contemplated as being in competition with freehold title in spite of the miners’ claims. In contrast, CSG rights directly and explicitly collide with what ... [Sir William Blackstone called] ‘the highest and most extensive interest that a man [*sic*] can have’ in land.⁶¹

In an attempt to alleviate understandable community disquiet, land access arrangements have been introduced in Queensland in various guises – one early example being the Guide. The political climate in which this document was produced is canvassed below.

Seeking amendments and more

Before exploring the development of the Guide and its contents, it is first necessary to understand the wider political environment that surrounded calls for changes to Queensland’s *Mining Act*. Reform efforts were made at a time of growth for the state’s export coal industry, with the exploration of the Bowen Basin presenting much promise. Schooled in the policy priorities of the Nicklin government before it (1957-68), the Bjelke-Petersen administration saw the State’s role as a facilitator of ‘development’. To

this end, state-supported infrastructure for the transportation and export of resources was a deliberate strategy adopted by government to encourage mining exploration and foreign investment.⁶² Alongside Victoria, Queensland had earned a reputation as a land of open-cut coal mines by the 1980s, with the Sunshine State seeing significant population growth in several mining centres in the 1970s as a result.⁶³ Against this favourable background, by mid-1980 Queensland had 43 coal mines in operation, 22 of which were open-cut.⁶⁴

Preferential treatment of mining operations ahead of other areas of public policy, namely environmental protection, is widely acknowledged in the literature concerning the Bjelke-Petersen era. But it should be said that anti-environmentalism and a pro-development focus was not a uniquely Queensland 'state of mind' in the 1970s and 1980s – with similar stances taken by governments throughout Australia, albeit with variations in degree.⁶⁵ Studies of Queensland's environmental politics and policy-making from the 1990s to the present would suggest that political affiliation (Labor or Liberal/National party) has mattered little to the enduring 'growth first' message of government.⁶⁶ The attempt to reform Queensland's mining legislation through industry consultation in the late 1970s and early 1980s was therefore a moment in which government was prepared to acknowledge that agriculture and mining both had a role to play in the economic development of the State.

Emerging out of the Queensland National Party's Annual Conference in July 1978,⁶⁷ a legislative streamlining agenda was posed for 'the entry upon and acquisition of land for the purposes of exploration and mining'.⁶⁸ Following on from the conference, a resolution to the party's State Management Committee created a select committee to 'investigate mining development as it affects rural lands, with a view to consolidating previous submissions and including such additional recommendations where need was demonstrated by the committee's enquiries'.⁶⁹ After holding public meetings at various centres and taking submissions from many farming organisations, mining companies and individual landholders, the Rural Policy Committee released its findings for the consideration of government on 25 September 1981.

The Report suggested a variety of possible amendments, including the replacement of the Mining Warden's Court with a Queensland Land Court, the development of a new Authority to Prospect for entry on to private land, increased bond requirements for mining companies to compensate for possible damage to landholders' property, and a recommendation that the calculation of fair market value compensation for landholders include a 'social disturbance' factor.⁷⁰ While the Report and Bill were focussed on mining in rural areas of Queensland, both documents provoked some observers to press for improvements to the planning process for mining near urban centres. The Labor Opposition member for Ipswich West, David Underwood, convened a seminar of local government authorities and mining companies to discuss the issue – although the Minister for Mines and Energy, Ivan Gibbs (Fig. 1), declined an invitation to attend.⁷¹ Already a known voice on urban environmental matters in the Labor party,⁷² Underwood expressed particular concern at a seeming lack of coordination between local government authorities and the Mines Department when planning residential development in areas with coal reserves. He urged that a resource management study be

implemented for the West Moreton region (close to Brisbane) in order to cope with the industry's expected future growth.⁷³

Beyond the Report's recommendations, three years of consultations with rural organisations and mining companies also revealed problems with mining sub-contractors opening fences and pushing down trees on properties without the permission of landholders.⁷⁴ Troubled by these developments, in 1980 the Queensland Grain Growers Association produced the booklet *Mining and the Farmer: A Farmers' Guide to Provisions of the Mining Act*, distributing this to other rural organisations, including the sugar industry.⁷⁵ While this publication lacked input from the mining industry itself, it was designed to encourage farmers to seek assistance in their negotiations with mining operators (Fig. 2).

Figure 1: Ivan Gibbs (right), Minister for Mines and Energy and National Party MLA for Albert, with Logan City Council Alderman, Ian Thomas, 1983.



Source: Logan City Council.

Additional complaints of soil erosion caused by mining surveys were raised in the months after the National Party's Report had been submitted to the government.⁷⁶ These incidents caused the Queensland Grain Growers Association to convene a meeting with the Queensland Chamber of Mines to improve industry awareness and advocate caution. Difficulties included 'an extremely badly managed seismic survey at Goondiwindi and a similarly badly managed coal survey at Daandine near Dalby [in 1981]. Both had created ... serious erosion hazards as well as tremendous disruption to the landholders concerned'.⁷⁷

While the issue of mining and agriculture proximity was raised when the Mining Act and Other Acts Amendment Bill was first presented to Parliament in December 1981,⁷⁸ the Department of Primary Industries had been conscious of this for some time.

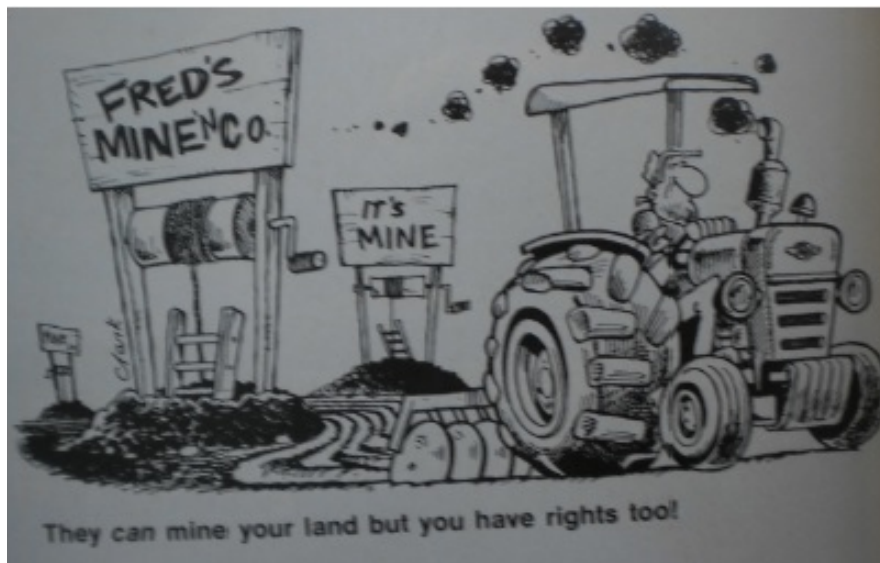
Dr Graham Alexander, Director-General of the Department, was keenly aware of the risks and rewards presented by the State's mineral expansion and saw fit to remark on this as one of the many challenges facing the agricultural sector as it greeted the 1980s:

The renewed interest and capital investment in mining represents very much a mixed bag for Queensland agriculture. Mining competes for land, water and labour resources but also creates market demand for some agricultural commodities in localised areas. Moreover, agriculture is likely to reap some external economies through the provision of better transport facilities and in the development of improved electricity and communications systems.⁷⁹

As the newly-appointed Minister for the Department of Primary Industries in 1980, Michael Ahern was particularly mindful of the need to be receptive to the concerns of the rural sector, with its many pressure groups enthusiastic about participating in what was a significant policy domain for the Queensland National Party.⁸⁰ Ahern expressed the hope that both mining and agricultural industries could compromise effectively for mutual benefit, when opening a conference on the subject at Biloela in central Queensland for the Australian Institute of Agricultural Science on 6 May 1981. Ahern urged the conference participants to work towards devising a 'rational approach' to coexistence – stressing the significance of both sectors to the Queensland economy.⁸¹ It would seem that the government did not wish to be drawn into the arguments of the parties. A desire for distance between government and disputes between mining and agricultural interests was not peculiar to Queensland, as authorities in colonial Zimbabwe adopted a similar 'hands off' approach in the early twentieth century in contests between non-indigenous farmers and gold miners over timber and water exploitation. The State confined itself to an observer status for several decades before introducing conservation legislation.⁸²

Prior to Parliament's consideration of amendments to the *Mining Act* in December 1981, the Queensland Grain Growers Association pressed the Minister for Mines and Energy, Ivan Gibbs, to replace 'Permits to Enter' for exploration activities under the Act with what it called a 'Prospecting Agreement'. It saw the Agreement as an opportunity for a court to initially assess a mining operator's work program before exploration began, thereby putting the landholder in an improved negotiating position. The Agreement would include measures that took account of erosion and rehabilitation, compensation, exploration methods and the timing of that work – including any agreement for repairs where necessary.⁸³ However, Gibbs believed the proposed Agreement would be 'unworkable because of the large number of Authorities to Prospect which are in force for minerals, compared to a much small number of Petroleum Authorities, where [the measures proposed by the Association were] already provided for'. The Association countered that the 'Prospecting Agreement we are proposing would really only formalise the voluntary convention which we are negotiating with the Chamber of Mines, with every chance of success'.⁸⁴ Their arguments were to no avail and the Association was left disappointed with the omission of their suggestion from the Act – but saw the mining industry as being more cooperative than government in its willingness to resolve 'problems before they arise'.⁸⁵

Figure 2: *Mining law education was a priority for farming organisations.*



Source: *Australian Canegrower*, September 1981, p. 80.

Having left the Minister unconvinced of their case, formal negotiations between the Queensland Grain Growers Association and the Queensland Chamber of Mines were entered into on 11 November 1981. The Chamber was initially ‘somewhat sceptical about the need for guidelines’ to manage the relationship between mining operators and landholders during the exploration phase – viewing the problems raised by farmers as relevant to a few isolated incidents involving sub-contractors. However, company representatives from both the coal and petroleum industries conceded during the meeting that ‘most of the difficulties experienced were due to lack of communication between company management and their field operators’. The Chamber’s delegation was ultimately convinced that the disruption caused by the operations of mining survey companies was unacceptable – endeavouring ‘to recommend to their organisation that they co-operate with ... [the Association] in developing a convention or code of ethics relating to prospecting’. By the conclusion of the meeting, the Association was satisfied that there was a ‘good prospect of our agreeing on a standard form of prospecting agreement which could be voluntarily adopted irrespective of what happens to the Mining Act’.⁸⁶

In the months that followed, the Chamber took the Association’s draft guidelines for landholder/miner relations and adapted them to a format deemed acceptable to member companies. It earned the respect of the Association by strengthening the document ‘in some respects’. The Chamber then circulated the proposed ‘Guidelines for Exploration’ among its members, ‘giving them the opportunity to endorse it and so have their names listed as subscribing to the convention’.⁸⁷ Ivan Gibbs was made aware of these developments and highlighted them when addressing the State Council of the Queensland Cane Growers’ Association at Toowoomba in April 1982. In praising the forging of a new spirit of accommodation and trust between producer organisations and the Chamber of Mines, Gibbs conceived of a ‘new era of co-operation’ between mining and agricultural interests, driven by both industries breaking new ground and the

increased ‘necessity for both parties to live together’.⁸⁸ Having gained the attention of the Minister, the Queensland Grain Growers Association also asked Gibbs to adopt the Guide ‘as the rules of behaviour and performance expected of those who hold Authorities to Prospect’.⁸⁹

The Guide was released in late June 1982 and the Chamber of Mines saw the document’s production as ‘a really worthwhile exercise in ensuring that relations between the two important primary industries remains at the very satisfactory level of recent years’.⁹⁰ The Guide placed a clear emphasis on mining companies assuming responsibility for promoting better relationships between themselves and farmers. In responding to questions from the media, the Executive Director of the Queensland Chamber of Mines, Michael Pinnock, agreed that the Guide’s provisions ‘would add to development and exploration costs’ in some instances, but stressed that the Guide was a necessity and that the Chamber’s members were unanimous in their support for the document.⁹¹ For its part, the Queensland Grain Growers Association regretted that the Guide’s preparation ‘took place in such a way that ... other producer organisations did not have the opportunity to participate ... [but hoped it was] acceptable’ – and sought the opinion of these other groups to pinpoint any problems with the Guidelines as they stood.⁹² While this raises questions about the quality of stakeholder involvement in the process, when evaluating the progress made in fostering an improved relationship between farmers and miners by August 1982, the General Manager for the Queensland Grain Growers Association, G.T. Houen, concluded:

Many of our growers would have believed two years ago that the system was stacked against them, with the Government and the mining companies in league with each other and mining companies enjoying political patronage. But I think they would now be more confident about their position in the light of the co-operation which the Chamber of Mines has extended to Queensland Graingrowers and other producer organisations. The recent release of our joint ‘Explorer-Landholder Procedures’ booklet is a milestone.⁹³

Although soil erosion remained an ongoing challenge for grain growers,⁹⁴ by 1984 mining and farming groups both agreed that ‘overall, communications between groups [were] much improved by industry action rather than Government intervention’.⁹⁵ Although government had not taken a role in formulating the Guide, it inadvertently brought the Chamber and Association together to create the document, through its refusal to adopt the Association’s recommendation for a formal ‘Prospecting Agreement’. Clearly, the parties saw the Guide as a moment of significance, yet what did the pamphlet offer by means of managing coexistence, and how is this document relevant to the Queensland Land Access Code 2010? From the information presented above, the Guide provides historical context for modern-day discussions of the Code, as the latest example of a long line of voluntary frameworks for positive land use. It provokes questions about the merits or otherwise of voluntary guidelines for managing stakeholder behaviour, the extent to which mining companies placed value in building positive community relationships, and the requirements for entering into a social licence to operate. Therefore, the next section will examine the Guide’s objectives.

The Guide's purpose

With the ultimate goal of ensuring 'satisfactory working relationships', the Guide sought to enshrine some general principles into the mining exploration process. These comprised close liaison with all landholders affected by exploration; minimising damage to infrastructure, vegetation and land; minimising disturbance to landholders and livestock; rectifying, without undue delay, any damage which could be reasonably repaired; promptly paying the landholder for any agreed damages; and abiding by additional 'Explorers Procedures'. These Procedures were premised on a mining exploration company selecting a key individual 'with an affinity for people on the land, and if possible, a knowledge of farming and grazing practice to be the Field Supervisor for the [exploration] survey'. The Field Supervisor envisioned by the Guide would be an employee of the exploration company, and would therefore have knowledge of all aspects of the survey, allowing them to 'inspect the area well in advance and pre-plan the survey to cause minimum disturbance to the land-holder and damage to his [*sic*] property'. Aside from this project knowledge, the Guide emphasised the value in a Field Supervisor engaging in direct contact with a landholder prior to a company's entry on to a property, allowing them to discuss the plans for exploration – including the location of potential problems such as 'buried water pipes, contour banks, shade clumps, erosion prone land ... gates and fences'. In view of the previous concerns with mining sub-contractors, the Guide stressed that 'contractors and subcontractors [should be] aware of company policy in the field and ensure that as far as practicable it is here adhered to ... [It was also noted that] the tenement holder and operator have the [ultimate] responsibility for the operation'.⁹⁶

Looking beyond the importance of effective professional relationships between landholders and miners, the Guide contained other points of note, such as ensuring that local government authorities were aware of the survey operation being carried out, the use of vehicles on roads (including any repairs to roads as a result of essential movement during wet weather), the cleaning of vehicles to prevent the spread of weeds, and the flexible positioning of bores to 'reduce to a minimum the destruction of trees and the creation of erosion hazards'. The landholder was to be invited 'to inspect the work area' when the project was complete 'so that any problems can be discussed'. Disturbance to the soil's surface was to be minimised wherever possible, 'particularly on cultivated land'. When damage did occur, the Guide saw the Field Supervisor's role as one of negotiator, with the authority to 'finalise compensation/restoration with the minimum of delay'.⁹⁷ While endorsed by the Queensland mining industry in general, the document itself was of a voluntary nature. Although the Guide lacked the statutory authority of the present-day land access regime, as will be shown below, both relied upon an expectation of goodwill between the parties.

Land Access Code implementation

In contrast to the Guide, where government involvement was minimal, the Queensland Land Access Code owes its existence to the creation of a Land Access Working Group (LAWG) in 2008. Comprised of representatives from the State Government, agricultural and resources sectors, the LAWG was charged with formulating solutions

to land access issues and improving relationships between the resources and agricultural industries – developing Queensland’s *Land Access Policy Framework 2009* and identifying deficiencies in the existing legislative framework.⁹⁸ The Land Access Code is one resulting reform from that process and indeed replaced the *Queensland Mining, Petroleum and Gas, Geothermal and Greenhouse Gas Storage Land Access Code* and the *Code of Conduct – Procedures for Sound Landholder/Explorer Relations*.⁹⁹ There are, however, several similarities between the Guide and Land Access Code. In imposing ‘a higher standard of behaviour on resource companies’ than had existed previously, the announcement of the present Code by the then Minister for Natural Resources, Mines and Energy, Stephen Robertson, echoed earlier sentiments from the 1980s: ‘The co-existence of both [mining and agricultural] sectors is fundamental to Queensland’s future economic prosperity and I am confident that improved transparency, equity and communication will help foster and maintain good relations between all parties.’¹⁰⁰

The Code is applicable to all Queensland resources legislation which deals with authorised activities on private land: the *Mineral Resources Act 1989*, *Petroleum and Gas (Production and Safety) Act 2004*, *Petroleum Act 1923*, *Greenhouse Gas Storage Act 2009* and the *Geothermal Energy Act 2010*.¹⁰¹ In this respect alone, the Code is far wider in its application than the Guide, as the latter was concerned solely with Authorities to Prospect under the *Mining Act* – the predecessor of the *Mineral Resources Act 1989*. Unlike the Guide, the Land Access Code is a creature of statute.¹⁰² While the Act supports the resolution of conflicts between coal seam gas, other mining and petroleum tenures,¹⁰³ it is silent on the protection of non-mining private property rights.¹⁰⁴

The Code’s purposes are twofold: ‘(a) ... [to state] best practice guidelines for communication between the holders of authorities and owners and occupiers of private land; (b) [to impose] on the authorities mandatory conditions concerning the conduct of authorised activities on private land’.¹⁰⁵ Part 2 of the Code is devoted to non-mandatory provisions, concerned with general principles to foster good relations between the parties. Like its Guide predecessor, close liaison with landholders is expected of the holder of a resource authority under the Code. Early warning of activities and prompt rectification of damage is also expected. In addition, the Code advises that a mining operator should ‘regard as confidential information obtained about landholder’s operations’.¹⁰⁶ A landholder is expected to liaise with an authority holder in good faith; engage with the holder of an authority ‘to identify issues such as values of property and operational considerations’; ‘respect the rights and activities of holders and provide reasonable access’, negotiate with the resource authority to arrive at suitable conduct and compensation arrangements; and regard information obtained about the holder’s operations as confidential.¹⁰⁷ Other provisions for communication, negotiating agreements and the carrying out of activities by the authority holder replicate many of the points raised in the Guide (such as appointing a field supervisor or site manager to liaise with the landholder), but unlike the Guide, there is an emphasis on the landholder accepting responsibility ‘to actively engage with the [authority] holder and make time available to discuss relevant issues’.¹⁰⁸

Part 3 of the Code contains mandatory conditions for the holders of resource authorities. This part of the Code is concerned with tenures under the relevant resources legislation mentioned above, and requires that authority holders (and all those acting for them) undertake induction training to ensure awareness of their obligations under resources legislation, the Code, and any agreements between themselves and the landholder. Access points for entering on to a landholder's property are given particular attention under the Code, with a special emphasis on avoiding interference with a landholder's business activities and repairs to any damage resulting from the use of roads and tracks. Minimal disturbance is a theme extended to livestock, the use of grids, fences and gates, with immediate notification of any changes being a significant element of the Code.¹⁰⁹ An explicit obligation to prevent the spread of declared pests extends the general duty of the Guide from one based on simply being 'aware' of weed infestation and livestock diseases (with an expectation of suitable precautionary measures for washing down vehicles), to a requirement that the *Land Protection (Pest and Stock Route Management) Act 2002* (Qld) be adhered to.¹¹⁰ Having surveyed the Code and Guide, some thoughts as to the Guide's possible relevance to the new regime follow.

Scope of relevance

The shift in expectations for landholder/miner interactions mentioned above in the Guide and Code are indicative of a more general discourse of responsibility in the history of Queensland land use policy. Katherine Witt has divided this discourse into a series of epochs, namely: Epoch 1: pre-1957, 'socialist' Queensland; Epoch 2: 1957-89, Queensland 'countrymindedness'; Epoch 3: 1989 to present, Queensland 'reformed'.¹¹¹ She suggests that a fourth epoch is underway as a result of 'new values in coal seam gas in rural Queensland'.¹¹² The Code and its supporting regulatory framework may therefore be an indication of this. While the introduction of statutes is often a reactive process to changing societal values,¹¹³ it is equally important to note that legal frameworks are also bound to 'enduring power relations and precedents' – which 'often ensure that longstanding understandings of human relations with the natural world persist'.¹¹⁴

Katherine Witt contends that within the history of Queensland's political discourse 'the rights of land ownership have remained peculiarly unresolved in the perceptions of rural landholders' – citing the expansion of coal seam gas extraction on agricultural land as an example of the reappearance of a property rights discourse.¹¹⁵ That statutory provisions governing land access are often reactive instruments rather than proactive should not surprise, as observed by Tina Hunter in 2011: 'At present the Western Australia government has not developed a statewide access policy framework or legislative provisions regarding land access [for shale gas extraction]. This is not unusual, given that Queensland only developed the policy framework and Access Code in 2010, many years after commercial CSG production commenced in that State'.¹¹⁶

At a general, contextual level, the Guide offers an example of a period in which constructive dialogue between miners and farmers was not only feasible, but capable of yielding mutually agreeable outcomes. Remembering historical instances of

accommodation can be difficult in the light of current controversies, but deserves to be recognised and perhaps reflected upon as a means of tempering heated disagreement. This is also consistent with Dovers' third category of relevance. In a similar vein, many of the problems encountered by an embryonic coal seam gas industry in Queensland in the late 1970s – particularly those relating to water extraction – have continued in the present, with Luke Keogh arguing that 'owning up to this history would place policy makers and regulators in a position to strengthen current regulation'.¹¹⁷ With 'fracking' for coal seam gas in Queensland and New South Wales currently presenting much controversy, there is potential for an historical perspective to be useful to all parties in arguments around the industry's social licence to operate.

There is also an argument that coal seam gas is 'no different to any other productive land use within a landscape'¹¹⁸ – with both threats and opportunities on offer. Multiple, competing requirements are ultimately a reality confronted by other sectors beyond mining, and the experiences of other contentious land uses may offer a map of sorts to improved relationships between stakeholders. Some of the findings from a recent study of plantation forestry and social acceptance in Western Australia and Tasmania could serve as markers in a coal seam gas context - particularly given the latter's export focus, physical presence in landscapes, capacity to generate local employment opportunities in rural areas and the longevity of the industry:

Plantations were considered more acceptable when planted on only part of a property rather than a whole property. Plantations were considered more acceptable in areas with local processing facilities than in areas where wood-chips are exported elsewhere. Plantations were considered more acceptable in areas with a few plantations than in areas with many or no plantations.¹¹⁹

The potential relevance of the Guide to the Land Access Code might be found in other ways, such as the Code's statutory endorsement. While this can be seen as beneficial for all involved, as noted above, the lack of enforceable guidelines for part 2 of the Code has frustrated some landholders, who perceive this aspect of the Code to be insufficient – arguing that it should 'be given a higher profile in a legislative sense' to force compliance.¹²⁰ General complaints about the Code might be resolved through better training for industry, in terms of their obligations when accessing a property.¹²¹ Other problems raised with part 2 of the Code relate to pest and weed management provisions, which could be 'better explained' and 'cover off on species that are not declared pest and weed species but are locally significant'.¹²²

Despite concerns from those consulted in the rural sector, these perspectives were not included in any formal recommendations from the Queensland Land Access Review Panel, nor were they discussed in the government's response to the Panel's report.¹²³ Should landholders continue to advocate for changes to part 2 of the Code in proposed future reviews of the Queensland Land Access Framework,¹²⁴ it could be useful to point out the voluntary predecessors of the Code, including the Guide. Doing so would highlight the fact that an entirely voluntary document has had at least some level of historical success in creating an environment of improved relationships between farmers and miners, without the advantage of statutory force. This could assist in

demonstrating that legally enforceable guidelines may not be necessary and that other means of securing compliance with the Code may be more appropriate.

Conclusion

From the above case study of cooperation between the Queensland Grain Growers Association and Queensland Chamber of Mines in 1981-82, it has been shown that their jointly-published Guide emerged out of dissatisfaction with the statutory framework for the exploration of minerals in landscapes of primary industry. Despite initial reluctance, it was recognised that accommodation of the two sectors was desirable and that appropriate mechanisms could be introduced between the two bodies in the absence of government authority. The Guide was released and used as an example for other jurisdictions to follow. It has also been argued that this historical instance of accommodation between the two sectors is relevant to the current Queensland Land Access Code and Dovers' typology for environmental history, as both a contextual example (indicating that balancing competing land uses is not new) and an historical baseline – which may be relevant in demonstrating how stakeholders react to voluntary frameworks, as opposed to those largely enforced by statute.

The attempt of the Code to create a sense of shared responsibility between farmers and miners is a step forward from the Guide's emphasis on mining exploration companies interacting appropriately with landholders. Yet, given that voluntary goodwill is still a crucial part of managing that relationship, it might be argued that the experience of the Guide also links to Dovers' third category of relevance for environmental history in terms of a direct policy lesson – by offering a means of reframing current stakeholder perceptions of the Code and possible changes to it in the future. It is also clear that environmental damage was ongoing after the introduction of the Guide, and that it remains a serious issue in spite of the guidance provided by the Land Access Code. These experiments with accommodation between farmers and miners can be expected to continue, ideally with more evaluation into how social, economic and environmental harms from competing land use requirements can be reduced. With coal and coal seam gas development in Queensland currently driving the expansion of port infrastructure at Abbot Point (near Bowen) and Gladstone – with additional implications for the Great Barrier Reef and World Heritage management in the context of climate change – these industries have drawn in a range of stakeholders which extends well beyond farmers and conservationists anxious about land access. Therefore, further research is to be encouraged to determine if other historical precedents can inform contemporary practices.

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